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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BARRY H. SCHWAB and JOHN G. POSA

Appeal 2010-001886
Application 08/822,397
Technology Center 2400

Before ROBERT E. NAPPI, CARL W. WHITEHEAD, and BRADLEY W.
BAUMEISTER, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

This is a decision on appeal under 35 U.S.C. § 134(a) of the rejection of claims 18 through 40.

We affirm in part.

INVENTION

The invention is directed to an apparatus for integration of plural television signals. See page 2 of Appellants' Specification. Claim 18 is reproduced below:

18. A method of automatically changing from a first TV program to an alternate TV program at a TV viewer location, comprising the steps of:
entering, at the viewer location, information regarding a viewing preference;
transmitting a TV program from a source to a viewer location;
receiving the TV program at the viewer location over a first TV channel, the TV program including a pointer to an alternate TV channel providing an alternate TV program with subject matter directly related to the TV program; and
automatically switching the TV program to the alternate TV program using the pointer and the information previously entered by the viewer without requiring any additional viewer intervention at the time of the switching.

REFERENCES

Vogel	US 4,930,160	May 29, 1990
Abecassis	US 5,664,046	Sep. 2, 1997

REJECTIONS AT ISSUE

The Examiner has rejected claims 18 through 40 under 35 U.S.C. § 103(a) as being unpatentable over Vogel in view of Abecassis. The Examiner's rejection is on pages 4 through 10 of the Answer.²

ISSUES

Appellants argue on pages 3 through 7 of the Brief³ that the Examiner's rejection of claims 18 through 40 under 35 U.S.C. § 103(a) is in error.

Appellants' contentions with respect to claims 18 through 40 present us with the issue: did the Examiner err in finding that the combination of the references teaches a pointer in addition to viewer's preference information to switch to an alternate TV channel as claimed?

FINDINGS OF FACT

1. Vogel teaches a television system where classification codes can cause the display to be switched to an alternate source. Abstract, col. 3, ll. 46-67.
2. The alternate source of video can be a signal pattern generator to provide electronic wall paper, from a remote source such as another television broadcast or from a video disk/tape player. Vogel, col. 6, ll. 25-45.

² Throughout this decision we refer to the Examiner's Answer dated July 20 2009.

³ Throughout this decision we refer to the Appeal Brief dated May 26, 2009 and Reply Brief dated September 21, 2009.

ANALYSIS

Initially, we note that Appellants' arguments address limitations in independent claims 18, 26, and 34, but do not address the limitations of any of the dependent claims. Accordingly, we will treat the claims in three groups, with the independent claims as being representative of each group.

Claims 18 through 25

Appellants' arguments have persuaded us that the Examiner erred in finding that the combination of the references teaches a pointer to an alternate TV channel as claimed. Claim 18 recites "the TV program including a pointer to an alternative TV channel providing an alternate TV program." Thus, the scope of claim 18 includes that the received TV program includes a pointer that identifies the alternative TV channel of the alternate television program.

The Examiner in rejecting this claim finds that Vogel teaches that a classification code is included in the TV program, this code is extracted and used to switch to receive alternative programming. Answer 5. Further, the Examiner states that Vogel teaches that the alternative programming can be electronic wall paper or from other sources such as another television broadcast. Answer 11. Examiner concludes that Vogel selects a particular video source signal in order to provide appropriate programming to a recipient. Answer 12-13. Finally, the Examiner concludes that:

Vogel teaches that the microcomputer 6 generates an address from the received classification codes, col. 4, lines 45-58 and applies it to the table to determine switching to the alternate source, which reads on the claimed '*pointer*'. Therefore, since Vogel provides a classification code to the receiver, which the microcomputer 6 uses for control in a channel-change procedure, to change the channel to a particular channel, the classification code in Vogel reads on the claimed '*pointer*.'

Answer 13. We concur with these findings by the Examiner as they are supported by the evidence (see Facts 1-2) with the exception that we do not concur that these teachings meet the claimed pointer. As discussed above, Appellants' TV program includes a pointer that contains an identification of the alternate television program. The Examiner has not shown that the classification code which is included in the TV signal identifies an alternative television program. Rather, the Examiner has shown that Vogel teaches that alternative television program is determined from a table and not a pointer. Accordingly, the Examiner has not shown that the combination of the references teaches all of the limitations of independent claim 18, so we do not sustain the Examiner's rejection of claims 18 through 25.

Claims 26 through 40

Appellants' arguments directed to the rejection of claims 26 through 40 under 35 U.S.C. § 103(a) relies on the same rationale as discussed with respect to claim 18. However, the scope of independent claims 26 and 34 differs from independent claim 18. Independent claim 26 includes the limitation directed to transmitting a TV program, "the program including additional information for directing the channel selector to automatically switch ... to one or more secondary transmission carrying media." Independent claim 34 detects a channel change command and "automatically select, on a different transmission medium, alternative program material." Thus, claims 26 and 34 are broader than claim 18 in that they do not require that the TV program identifies the alternative TV channel. Claim 26 merely recites that the TV channel includes "information" and claim 34 merely

recites that an alternate medium is selected in response to a channel-change command. As discussed above the Examiner has found that the classification codes provide information to the receiver to change the channel to an alternate source (channel). Thus, Appellants' arguments directed to Vogel not teaching a pointer have not persuaded us of error in the Examiner's rejection of claims 26 through 40 because neither claim 26 or claim 34 recite a pointer.

Appellants' further argument, on page 7 of the Brief that "Vogel clearly teaches away from providing subject matter directly related to the TV program, since the entire purpose of Vogel *is to censor*" is not persuasive. We concur with the Examiner's reasoning, on pages 14 and 15 of the Answer that the skilled artisan would recognize that by the alternate media including information related to the current program would maintain continuity in the program.

Accordingly, we sustain the Examiner's rejection of claims 26 through 40

CONCLUSION

Appellants have not persuaded us of error in the Examiner's decision rejecting claims 26 through 40. However, Appellants have persuaded us of error in the Examiner's decision rejecting claims 18 through 25.

ORDER

The Examiner's decision rejecting claims 18 through 25 is reversed.
The Examiner's decision rejecting claims 26-40 is affirmed.

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Application 08/822,397

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED IN PART

ELD

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